

AMENDED IN SENATE AUGUST 20, 2003

AMENDED IN SENATE JULY 10, 2003

AMENDED IN ASSEMBLY MAY 8, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1297

Introduced by Assembly Member Frommer

February 21, 2003

An act to add Sections 413.35, 664.61, and 2017.5 to the Code of Civil Procedure, and to amend Sections 1623~~and~~, 1625, *1662, and 1732* of, and to add Section ~~1727.5~~ *1704.1* to, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1297, as amended, Frommer. Insurance.

Existing law provides that a summons may be served on a corporation by delivering a copy of the summons and of the complaint to specified persons, including the person designated as agent for service of process. Existing law provides that, in lieu of personal delivery, a summons may be served by leaving a copy of the summons and of the complaint during usual office hours in the person's office with the person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and of the complaint to the person to be served at the place where the summons and the complaint were left.

This bill would provide that, if an insurer has accepted coverage for a loss, in lieu of personal service on a party who is insured, a copy of

the summons and complaint may be served upon the defendant's insurer or the agent for process designated by the insurer by delivering the summons and the complaint to the person who is apparently in charge of the office, during the usual hours of the office, or by mailing a copy of the summons and the complaint, as specified. It would require the insurer to request that the insured authorize the insurer to accept service of process on his or her behalf, and would require the insurer, if authorized to accept service of process, to respond to the complaint on behalf of the insured within a specified period.

Existing law allows a court to enter judgment pursuant to the terms of a settlement entered into between the parties to pending litigation.

This bill would provide that the failure of an insured to sign a settlement agreement that was signed by an authorized representative on behalf of the insured shall not relieve the insurer of responsibility to honor the settlement, unless the insurance policy requires the consent of the insured for settlement.

Existing law requires any insurer issuing policies of motor vehicle liability insurance, upon request of the named insured or the Department of Motor Vehicles, to promptly issue written verification of that coverage. Existing law allows a party to litigation to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action if the matter is admissible in evidence or is reasonably calculated to lead to the discovery of admissible evidence, except as specified.

This bill would provide, in addition, that prior to the commencement of litigation involving a motor vehicle liability insurance policy, an injured person may request policy limits information, as specified, from an insurer who may be potentially liable to satisfy a claim under the policy. It would require that any settlement demand made by a represented plaintiff prior to the commencement of litigation for bodily injury in excess of \$10,000 be in writing served by registered mail, return receipt requested.

Existing law provides that a fire and casualty broker-agent shall, prior to acting in the capacity of an insurance broker, file and continuously maintain in force a bond of \$10,000, and that any authority to act as broker shall automatically terminate immediately upon there being no bond in force.

This bill would specify that the automatic termination would last until a new bond has been filed with the Insurance Commissioner.



Existing law requires every application for insurance submitted by an insurance broker to an insurer to show that the person is acting as an insurance broker. Existing law provides that, if the application shows that the person is acting as an insurance broker and is licensed as an insurance broker in the state in which the application is submitted, it shall be presumed, for licensing purposes only, that the person is acting as an insurance broker.

This bill would eliminate the provisions creating this presumption and would provide ~~instead that it shall be conclusively presumed that a fire and casualty broker-agent licensee or a personal lines broker-agent licensee, as defined, who is not appointed by an insurer as an agent, acted shall be presumed to be acting as an insurance broker in a transaction involving with respect to a consumer's purchase of or application to purchase auto or homeowner's insurance, and any umbrella coverage associated therewith, if the licensee has (1) obtained from the consumer a signed broker fee disclosure and agreement in a specified form acknowledging that the licensee has acted as an insurance broker with respect to the consumer's purchase of, or application to purchase, certain types of personal insurance coverage and any personal liability umbrella coverage associated therewith, and (2) maintained in force a bond and liability insurance as required by other provisions of law. The bill would allow an insurer to extend binding authority to any fire and casualty licensee who complies with these provisions. It would provide that the insurer shall be responsible for acts and omissions of a fire and casualty licensee, and be bound by the licensee's representations, to the same extent as if the licensee was the agent of the insurer, unless the insurer (1) has authorized the licensee to obligate the insurer, as specified; (2) has agreed with the licensee to authorize the licensee to represent the insurer in an insurance transaction with an insured, as specified; or (3) controls or reserves the right to control how the licensee conducts his or her insurance business. The bill would provide that these provisions shall not apply to the brokerage of commercial or surplus lines of insurance, or to insurance intermediaries.~~

Existing law generally regulates the licensing and conduct of insurance brokers, as defined.

~~This bill would require that insurance brokers maintain errors and omissions liability insurance covering the broker's transactions, in an amount no less than \$250,000. Existing law permits a person licensed as a fire and casualty broker-agent acting as an insurance broker to act~~



as an insurance agent in collecting and transmitting premium or return premium funds and delivering policies and other documents evidencing insurance.

This bill would instead state that one of these broker-agents, and any personal lines broker-agent, shall be deemed an agent of an insurer if the insurer has filed a notice of appointment naming the agent, or if the insurer should have filed a notice of appointment due to a broker-agent's satisfying the new presumption created by this bill that he or she is acting as a broker in a consumer purchase of, or application to purchase, specified types of insurance. The bill would specify that collecting, maintaining, and transmitting premium or return premium funds, and ministerially delivering evidence of coverage, would not cause a licensee to be deemed an agent of an insurer.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 415.35 is added to the Code of Civil
2 Procedure, to read:

3 415.35. (a) If an insurer has accepted coverage for a loss, in
4 lieu of personal service on a party who is insured, a copy of the
5 summons and complaint may be served by a substituted service of
6 process upon the defendant's insurer or the agent for process
7 designated by the insurer and filed with the Department of
8 Insurance. Substitute service of process shall be effected by
9 delivering a copy of the summons and of the complaint to the
10 person who is apparently in charge of the office, during the usual
11 hours of the office, or by mailing a copy of the summons and of
12 the complaint, by registered mail, return receipt requested,
13 addressed to the person to be served at the address of the insurer
14 where a copy of the summons and of the complaint could have
15 been delivered. The insurer shall request that the insured authorize
16 the insurer to accept service of process on his or her behalf. The
17 insurer's notice to the insured shall advise the insured that if he or
18 she declines to authorize the insurer to accept service, he or she
19 may be served personally at home, or at his or her place of
20 business.

21 (b) If the insured authorizes the insurer to accept service on his
22 or her behalf, the insurer shall respond to the complaint on behalf

1 of the insured within 30 days of the authorization. If the insured
 2 does not authorize the insurer to accept service on his or her behalf
 3 within 30 days, the insurer shall immediately notify the plaintiff
 4 of that fact and provide the plaintiff with the last known address
 5 of the insured. If the insured does not respond to the insurer's
 6 request, the insurer shall immediately notify the plaintiff of that
 7 fact and provide the plaintiff with the last known address of the
 8 insured. Upon receipt of the notification and last known address,
 9 the plaintiff may elect to limit his or her demand to policy limits
 10 and provide notice to the insurer by certified mail of that election.
 11 The insurer shall accept service of process on behalf of the insured
 12 within 30 days of the notice of election. The insurer shall retain any
 13 policy defenses, including the defense of failure to cooperate. If
 14 the insured participates in discovery after commencement of the
 15 action, the plaintiff's election shall be deemed null and the
 16 plaintiff's demand shall no longer be limited to the policy limits.

17 SEC. 2. Section 664.61 is added to the Code of Civil
 18 Procedure, to read:

19 664.61. The failure of an insured to sign a settlement
 20 agreement that was signed by an authorized representative on
 21 behalf of the insured shall not relieve the insurer of responsibility
 22 to honor the settlement, unless the insurance policy requires the
 23 consent of the insured for settlement.

24 SEC. 3. Section 2017.5 is added to the Code of Civil
 25 Procedure, to read:

26 2017.5. (a) Prior to the commencement of litigation, an
 27 injured person may request policy limits information from an
 28 insurer who may be potentially liable to satisfy part or all of a claim
 29 for loss or damage under the policy. Within 30 days of the receipt
 30 of a written request from an injured person, an insurer shall
 31 provide a statement from a claims adjuster, made under oath,
 32 containing all of the following information with respect to the
 33 policy:

- 34 (1) The name of the insurer.
 - 35 (2) The name of the insured.
 - 36 (3) The limits of liability coverage.
 - 37 (4) Any known available coverage.
- 38 (b) For the purposes of this section, an application for insurance
 39 shall not be treated as part of an insurance policy.

(c) The information described in subdivision (a) shall not be deemed to be personal information, as defined in subdivision (s) of Section 791.02 of the Insurance Code.

(d) Any misrepresentation as to the existence or limits of available coverage shall not be privileged under Section 47 of the Civil Code.

(e) Any settlement demand made by a represented plaintiff prior to the commencement of litigation for alleged bodily injury in excess of ten thousand dollars (\$10,000) shall be in writing served by registered mail, return receipt requested.

SEC. 4. Section 1623 of the Insurance Code is amended to read:

1623. An insurance broker is a person who, for compensation and on behalf of another person, transacts insurance other than life insurance with, but not on behalf of, an insurer.

SEC. 5. Section 1625 of the Insurance Code is amended to read:

1625. (a) A fire and casualty licensee is a person authorized to act as an insurance agent, broker, or solicitor, and a fire and casualty broker-agent license is a license so to act.

(b) A fire and casualty licensee is also authorized to transact 24-hour care coverage, as defined in Section 1749.02, and any coverage that a personal lines licensee is authorized to transact pursuant to Section 1625.5.

~~(c) With respect to any transaction involving a licensee not appointed as an agent pursuant to subdivision (a) of Section 1704 by the insurer to which the risk is submitted, and involving a consumer's purchase or application to purchase personal insurance coverage of a type described in Section 660 or 675, and any umbrella coverage associated therewith, it shall be conclusively presumed that the licensee acted as an insurance broker, and may charge a broker fee, if the licensee has done each of the following:~~

~~(1) Obtained from the consumer a signed broker fee disclosure and agreement, in a form that complies with the rules and regulations adopted by the commissioner pursuant to Section 790.10, acknowledging that the licensee has acted as an insurance broker with respect to the consumer's purchase of, or application to purchase, personal insurance coverage of a type described in Section 660 or 675, and any personal liability umbrella coverage~~

1 ~~associated therewith. The disclosure shall advise the consumer~~
2 ~~that if a broker fee is charged, it is in addition to any advertised~~
3 ~~premium.~~

4 ~~(2) Maintained in force the bond required by Section 1662 and~~
5 ~~the liability insurance required by Section 1727.5.~~

6 ~~(d) An insurer may extend binding authority to any fire and~~
7 ~~casualty licensee who complies with subdivision (c). The insurer~~
8 ~~shall be responsible for the acts, omissions, conduct, and~~
9 ~~transactions, and shall be bound by the representations, of the~~
10 ~~licensee in the placement of the insurance with the insurer to the~~
11 ~~same extent as if the licensee was the agent of the insurer in the~~
12 ~~transaction. An insurer remains liable to an insured for the acts,~~
13 ~~omissions, or transactions of, and is bound by the representations~~
14 ~~of, an agent of an insurer.~~

15 ~~(e) A fire and casualty licensee acting as a broker under~~
16 ~~subdivision (e) is not subject to appointment under subdivision (a)~~
17 ~~of Section 1704.~~

18 ~~(f) Nothing in this section is intended to affect any rights or~~
19 ~~remedies otherwise available under the law.~~

20 ~~SEC. 6. Section 1727.5 is added to the Insurance Code, to~~
21 ~~read:~~

22 ~~1727.5. Every licensee acting as an insurance broker shall~~
23 ~~maintain errors and omissions liability insurance covering~~
24 ~~transactions of the licensee, in an amount no less than two hundred~~
25 ~~fifty thousand dollars (\$250,000).~~

26 ~~SEC. 7.~~

27 ~~SEC. 6. Section 1662 of the Insurance Code is amended to~~
28 ~~read:~~

29 ~~1662. A fire and casualty broker-agent shall, prior to acting in~~
30 ~~the capacity of an insurance broker, file and continuously maintain~~
31 ~~in force the bond required by this article. Any authority to act as~~
32 ~~broker shall automatically terminate immediately upon there~~
33 ~~being no bond in force, until a new bond has been filed with the~~
34 ~~commissioner.~~

35 ~~SEC. 7. Section 1704.1 is added to the Insurance Code, to~~
36 ~~read:~~

37 ~~1704.1. A fire and casualty broker-agent licensee or personal~~
38 ~~lines broker-agent licensee shall be presumed to be acting as a~~
39 ~~broker with respect to a consumer's purchase or application to~~
40 ~~purchase personal insurance coverages of a type described in~~

1 Section 660 or 675, and any umbrella coverage associated
2 therewith, provided that the broker has obtained from the
3 consumer a signed broker fee disclosure and agreement, in a form
4 that complies with the rules and regulations adopted by the
5 commissioner pursuant to Section 790.10, acknowledging that the
6 licensee has acted as an insurance broker, unless any one of the
7 following exists:

8 (a) The insurer has authorized the licensee to decide whether
9 or not to contractually obligate the insurance company. Allowing
10 a licensee to provide an insured with a binder, certificate of
11 insurance, insurance identification card, or any other document
12 indicating that insurance is or will be in effect as of a certain date
13 and time, without the insurer's or its service provider's prior oral,
14 written, or electronic confirmation of coverage for that insured,
15 shall constitute authorization to decide to contractually obligate.

16 (b) The insurer and licensee have a written or oral agreement
17 or understanding in which the insurer authorizes the licensee to
18 represent the insurer in an insurance transaction with an insured.
19 However, a licensee may collect, maintain, and transmit premium
20 or return premium funds on behalf of an insurer, and ministerially
21 deliver evidence of coverage, without being deemed an agent of the
22 insurer.

23 (c) The insurer controls or reserves the right to control how the
24 licensee conducts his or her insurance business. However, a
25 written agreement between an insurer and a producer in which the
26 producer agrees to certain terms that directly impact the insurer's
27 legal liability or its desire to receive applications, inquiries,
28 premiums, and initial claim reports in a certain manner shall not
29 constitute evidence that the insurer controls how the licensee
30 conducts business.

31 (d) This section shall not apply to the brokerage of commercial
32 or surplus lines of insurance, or to insurance intermediaries.

33 SEC. 8. Section 1732 of the Insurance Code is amended to
34 read:

35 1732. A person licensed as a fire and casualty broker-agent
36 ~~acting as an insurance broker may act as an insurance agent in~~
37 ~~collecting and transmitting premium or return premium funds and~~
38 ~~delivering policies and other documents evidencing insurance or~~
39 ~~personal lines broker-agent shall be deemed an agent of an insurer~~
40 ~~if the insurer has filed a notice of appointment naming the agent~~

- 1 *pursuant to Section 1704, or if the insurer should have filed a*
- 2 *notice of appointment pursuant to Section 1704.1.*
- 3 *SEC. 9.* Nothing in this act shall affect any existing litigation
- 4 commenced prior to the effective date of this act.

